

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANGELA M. ZIMMERLINK,

Plaintiff,

vs.

**VINCENT ZAPOTOSKY and
VINCENT A. VICITES,**

Defendants.

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Judge David Stewart Cercone

Magistrate Judge Cathy Bissoon

MEMORANDUM ORDER

AND NOW, this 18th day of May, 2011, after de novo review of the record and upon due consideration of [27] the magistrate judge's report and recommendation filed on April 11, 2011, and [28] defendants' objections thereto, IT IS ORDERED that [22] the Defendants' Motion to Dismiss Amended Complaint be, and the same hereby is, denied. The report and recommendation as augmented herein is adopted as the opinion of the court.

Defendants' objections are without merit. Each matter raised therein merely reiterates a construction of the amended complaint or argument which thoroughly was considered by the magistrate judge and found to be unavailing. First, "[a] defendant has the burden to establish that he is entitled to qualified immunity." Kopec v. Tate, 361 F.3d 772, 776 (3d Cir. 2004). As aptly set forth in the report and recommendation, the amended complaint sufficiently sets forth enough factual matter to advance a plausible claim for relief on First and Fourteenth Amendment grounds. Against this backdrop defendants' attempt to invoke the shield of legislative immunity as a component of qualified immunity falls well short of demonstrating conclusively that plaintiff's clearly established First Amendment rights to meaningful participation in the official business of the elected office were not violated by the alleged pattern of exclusion and retaliatory actions and/or that a reasonable public official in defendants' position would not have recognized that the alleged pattern would violate those rights. Second, whether the only conduct plaintiff

can prove in support of her Equal Protection claim is duplicative of the activity receiving First Amendment protection is not an appropriate inquiry at this juncture. Consequently, defendants' motion to dismiss properly has been denied.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Honorable Cathy Bissoon
United States Magistrate Judge

E. J. Strassburger, Esquire
Jordan L. Strassburger, Esquire

Thomas P. McGinnis, Esquire
Karin Romano Galbraith, Esquire

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